

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicants: Braulio A. POLANCO et al.

Serial No.: 10/749,805

Filing Date: 31 December 2003

Title: HIGH LOFT LOW DENSITY NONWOVEN
WEBS OF CRIMPED FILAMENTS AND
METHODS OF MAKING SAME

Customer No. 35844

Group No.: 1771
Examiner: J. Pierce

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets, of which there are not more than five.

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450 on

04 November 05

04 Nov 05

Date

Braulio A. Polanco

Signature

REMARKS

Applicants request that the panel review the legal and factual insufficiencies of the following rejections contained in the final Office Action of 05 August 2005, as set forth in the Detailed Action thereof.

Claim Rejections -35 USC § 112**§ 112 First paragraph**

Per paragraph 3 of the Detailed Action, Claims 2-9, 20-22, 24-38, 40-46, 48, and 49 stand rejected under 35 USC § 112 (first paragraph) as failing to comply with the enablement requirement. The Detailed Action contends that the specification does not teach a person having ordinary skill in the art how formation index values correlate with a basis weight or bulk of the a web because there are no discernible trends between the values.

Both the legal basis and the factual basis of this rejection are clearly in error.

Applicants contend that there is no legal basis for a requirement of “discernable trends” under the statute.

Applicants further contend the Examiner has not provided sufficient factual findings with respect to the ordinary level of skill in the art to support a *prima facie* case for this rejection. Applicants further contend that no reasonable findings with respect to the ordinary level of skill in the art could support a *prima facie* case for this rejection.

Applicants refer the panel to their discussion of the legal and factual insufficiency of this rejection as contained in Applicants’ Amendment After Final Rejection dated 05 October 2005, at pages 14-15 (first 5 paragraphs under the heading “Claim Rejections -35 USC § 112”) and the corresponding arguments at Applicants’ Amendment A of 23 May 2005 at pages 14-15 (first 5 paragraphs under the heading “Claim Rejections -35 USC § 112”). The panel is further referred to Applicants’ Amendment After Final Rejection dated 05 October 2005, at pages 18-19, all paragraphs under the heading “Response to Arguments”.

§ 112 Second paragraph

Per paragraph 5 of the Detailed Action, Claims 2-5, 20-22, 35-38 and 43-45 stand rejected under 35 USC § 112 (second paragraph) as failing to particularly point out and distinctly claim the invention because: “...it is unclear how a nonwoven material can have two or more different bulk values or two or more different basis weights.”

The factual basis of this rejection is clearly in error.

Applicants contend that the Examiner has not provided sufficient factual findings with respect to the ordinary level of skill in the art to support a *prima facie* case for this rejection. Applicants further contend that no reasonable interpretation of the claims at issue or reasonable findings with respect to the ordinary level of skill in the art could support a *prima facie* case for this rejection.

Applicants refer the panel to their discussion of the factual insufficiency of this rejection as contained in Applicants' Amendment After Final Rejection dated 05 October 2005, at pages 15, last paragraph to page 16, first paragraph.

Claim Rejections -35 USC §102/103

Per paragraph 8 of the Detailed Action, Claims 1-15, 19-22, 24-30, 34-38, 40-46, 48 and 49 are rejected as anticipated by, or in the alternative obvious over, Pike et al. (US 5,382,400, hereinafter "Pike").

It is the contention of the Detailed Action that a material according to Pike would inherently meet (or make obvious) the limitations of the present claims. "Support for said presumption is found in the use of similar materials ... and in the similar production steps ... used to produce the nonwoven fabric."

The factual basis and logical basis of this rejection are clearly in error.

Applicants contend that the Examiner has not provided sufficient findings drawn from the art itself to support a *prima facie* case for this rejection.

Applicants refer the panel to their discussion of the insufficiency of this rejection as contained in Applicants' Amendment After Final Rejection dated 05 October 2005, at pages 16-17, (fifth through eleventh paragraphs and footnotes therein under the heading "Claim Rejections -35 USC § 102/103").

Claim Rejections -35 USC §103

Per paragraph 9 of the Detailed Action, Claims 16-18 and 31-33 are rejected as obvious over Pike in view of Sudduth et al. (US 5,770,531, hereinafter "Sudduth").

The factual basis and logical basis of this rejection are clearly in error.

Applicants contend that the Examiner has not provided sufficient findings drawn from the art itself to support a *prima facie* case for this rejection.

Applicants refer the panel to their discussion of the insufficiency of this rejection as contained in Applicants' Amendment After Final Rejection dated 05 October 2005, at page 17, last paragraph through page 18, first paragraph.

Conclusion

Applicants request that the panel, upon review and understanding of the clear errors and insufficiencies of the final Office Action of 05 August 2005, find for the Applicants concerning each of the above rejections.

Favorable consideration is requested.

Respectfully submitted,



Roland W. Norris
Registration No. 32,799

Pauley Petersen & Erickson
2800 West Higgins Road; Suite 365
Hoffman Estates, Illinois 60195
TEL (847) 490-1400
FAX (847) 490-1403